APPENDIX A

Statutes Involved

The following provisions of the Administrative Procedure Act are involved:

5 U.S.C §1001 [Sec. 2, 1946, 60 Stat. 237]. Definitions

As used in this Act—

* * * * *

(c) Rule and rule making.—"Rule" means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. "Rule making" means agency process for the formulation, amendment, or repeal of a rule.

* * * * *

5 U.S.C. §1002 [Sec. 3, 60 Stat. 238]. Public Information

Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of any agency—

(a) Rules.—Every agency shall separately state

and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

* * * * *

5 U.S.C. §1003 [Sec. 4, 60 Stat. 238]. Rule Making

Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) Notice. — General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall

include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) Procedures.—After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

* * * * *

5 U.S.C. §1009 [Sec. 10, 60 Stat. 243]. Judicial Review

Except so far as (1) statutes preclude judicial re-

view or (2) agency action is by law commited to agency discretion.

(a) Right of review.—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) Form and venue of action.—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence of inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) Reviewable acts.—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review.

* * * * *

(e) Scope of review.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of

any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

The following provisions of the Immigration and Nationality Act (Act of June 27, 1952, 66 Stat. 163, 8 U.S.C. 1101 *et seq.*) are also involved:

8 U.S.C. §1101 [Sec. 101]. Definitions

(a) as used in this chapter—

* * * * *

(3) The term "alien" means any person not a citizen or national of the United States.

(4) The term "application for admission" has

reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5) The term "Attorney General" means the Attorney General of the United States.

(6) The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations.

* * * * *

(13) The term "entry" means any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him or his presence in a foreign port or place or in an outlying possession was not voluntary: *Provided,* That no person whose departure from the United States was occasioned by

deportation proceedings, extradition, or other legal process shall be held to be entitled to such exception.

* * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of non-immigrant aliens—

* * * * *

(B) An alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

* * * * *

(D) an alien crewman serving in good faith as such in any capacity required for normal operation and service on board a vessel (other than a fishing vessel having its home port or an operating base in the United States) or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and

children of any such alien if accompanying or following to join him: (i) solely to carry on substantial trade, principally between the United States and the foreign state of which he is a national; or (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital;

* * * * *

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country; or (iii) who is coming temporarily to the United States as an industrial trainee;

(I) upon a basis or reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him.

(16) The term "immigrant visa" means an immigrant visa required by this chapter and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this chapter.

(17) The term "immigration laws" includes this chapter and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens.

* * * * *

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term "national" means a person owing permanent allegiance to a state.

(22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

* * * * *

(26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter.

(27) The term "nonquota immigrant" means—

(A) an immigrant who is the child or the spouse of a citizen of the United States;

(B) an immigrant, lawfully admitted for

permanent residence, who is returning from a temporary visit abroad;

(C) an immigrant who was born in Canada, the Republic of Mexico, the Republic of Cuba, the Republic of Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America, and the spouse or the child of any such immigrant, if accompanying or following to join him;

* * * * *

(F) (i) an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination, and whose services are needed by such religious denomination having a bona fide organization in the United States; and (ii) the spouse or the child of any such immigrant, if accompanying or following to join him; or

* * * * *

(31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32) The term "quota immigrant" means any immigrant who is not a nonquota immigrant. An

alien who is not particularly specified in this chapter as a nonquota immigrant or a nonimmigrant shall not be admitted or considered in any manner to be either a nonquota immigrant or a nonimmigrant notwithstanding his relationship to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbidding immigration.

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. Residence shall be considered continuous for the purposes of sections 1482 and 1484 of this title where there is a continuity of stay but not necessarily an uninterrupted physical presence in a foreign state or states or outside the United States.

8 U.S.C. §1181 [Sec. 211]. Admission into the United States—Documentary requirements

(a) No immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such immigrant visa of the accompanying parent, (2) is properly chargeable to the quota specified in the immigrant visa, (3) is a nonquota immigrant if specified as such in the immigrant visa, (4) is of the proper status under the quota specified in the immigrant visa, and (5) is otherwise admissible under this chapter.

Readmission after temporary departure

(b) Notwithstanding the provisions of section 1182(a)(20) of this title, in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation.

* * * * *

(e) Every alien making application for admission as an immigrant shall present a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General.

8 U.S.C. §1182 [Sec. 212]. Excludable classes of aliens; non-applicability to certain aliens

(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

* * * * *

(14) Aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor, if the Secretary of Labor has determined and certified to the Secretary of State and to the At-

torney General that (A) sufficient workers in the United States who are able, willing, and qualified are available at the time (of application for a visa and for admission to the United States) and place (to which the alien is destined) to perform such skilled or unskilled labor, or (B) the employment of such aliens will adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply only to the following classes: (i) those aliens described in the nonpreference category of section 1153(a)(4) of this title, (ii) those aliens described in section 1101(a)(27)(C), (27)(D), or (27)(E) of this title (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence, unless their services are determined by the Attorney General to be needed urgently in the United States because of the high education, technical training, specialized experience, or exceptional ability of such immigrants and to be substantially beneficial prospectively to the national economy, cultural interest or welfare of the United States;

* * * * *

(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;

(20) Except as otherwise specifically provided in

this chapter, any immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General pursuant to section 1181(e) of this title;

* * * * *

(25) Aliens (other than aliens who have been lawfully admitted for permanent residence and who are returning from a temporary visit abroad) over sixteen years of age, physically capable of reading, who cannot read and understand some language or dialect;

(26) Any nonimmigrant who is not in possession of (A) a passport valid for a minimum period of six months from the date of the expiration of the initial period of his admission or contemplated initial period of stay authorizing him to return to the country from which he came or to proceed to and enter some other country during such period; and (B) at the time of application for admission a valid nonimmigrant visa or border crossing identification card;

* * * * *

(c) Aliens lawfully admitted for permanent residence who temporarily proceeded abroad volun-

tarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of paragraphs (1)-(25), (30), and (31) of subsection (a) of this section. Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 1181(b) of this title.

8 U.S.C. §1184 [Sec. 214]. Admission of nonimmigrants —Regulations

(a) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States.

Presumption of status; written waiver

(b) Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 1101(a)(15) of

this title. An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 1257(b) of this title.

(c) The question of importing any alien as a nonimmigrant under section 1101(a)(15)(H) of this title in any specific case or specific cases shall be determined by the Attorney General after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition, shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.

8 U.S.C. §1201 [Sec. 221].

* * * * *

Non-issuance of visas or other documents

(g) No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the

papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law, (2) the application fails to comply with the provisions of this chapter, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law: *Provided,* That a visa or other documentation may be issued to an alien who is within the purview of subsection (a) (7) or (15) of section 1182 of this title, if such alien is otherwise entitled to receive a visa or other documentation, upon receipt of notice by the consular officer from the Attorney General of the giving of a bond or undertaking providing indemnity as in the case of aliens admitted under section 1183 of this title.

Nonadmission upon arrival

(h) Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to enter the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this chapter, or any other provision of law. The substance of this subsection shall appear upon every visa application.

8 U.S.C. §1202 [Sec. 222]. Application for visas—Immigrant visas

(a) Every alien applying for an immigrant visa

and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application the immigrant shall state his full and true name, and any other name which he has used or by which he has been known; age and sex; race and ethnic classification; the date and place of his birth; present address and places of previous residences; whether married or single, and the names and places of residence of spouse and children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); languages he can speak, read, or write; names and addresses of parents, and if neither parent living then the name and address of his next of kin in the country from which he comes; port of entry into the United States; final destination, if any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and, if so, the name and complete address of such relative or friend; the purpose for which he is going to the United States; the length of time he intends to remain in the United States; whether or not he intends to remain in the United States permanently; whether he was ever arrested, convicted or was ever in prison or almshouse; whether he has ever been the beneficiary of a pardon or an amnesty; whether he has ever been treated in an institution or hospital or other place for insanity or other mental disease; if he claims to be a preference quota or a nonquota immigrant, the facts on which he bases such claim; whether or not he is a member

of any class of individuals excluded from admission into the United States, or whether he claims to be exempt from exclusion under the immigration laws; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

* * * * *

Signing and verification of application

(e) Except as may be otherwise prescribed by regulations, each copy of an application required by this section shall be signed by the applicant in the presence of the consular officer, and verified by the oath of the applicant administered by the consular officer. One copy of the application for an immigrant visa, when visaed by the consular officer, shall become the immigrant visa, and the other copy shall be disposed of as may be by regulations prescribed. The application for a nonimmigrant visa or other documentation as a nonimmigrant shall be disposed of as may be by regulations prescribed. The issuance of a nonimmigrant visa shall, except as may be otherwise by regulations prescribed, be evidenced by a stamp placed by the consular officer in the alien's passport.

8 U.S.C. §1203 [Sec. 223]. Re-entry permit—Application; contents

(a) (1) Any alien lawfully admitted for permanent residence, or (2) any alien lawfully admitted to the United States pursuant to clause 6 of section

3 of the Immigration Act of 1924, between July 1, 1924, and July 5, 1932, both dates inclusive, who intends to depart temporarily from the United States may make application to the Attorney General for a permit to reenter the United States, stating the length of his intended absence or absences, and the reasons therefor. Such applications shall be made under oath, and shall be in such form, contain such information, and be accompanied by such photographs of the applicant as may be by regulations prescribed.

Issuance of permit: extension

(b) If the Attorney General finds (1) that the applicant under subsection (a)(1) of this section has been lawfully admitted to the United States for permanent residence, or that the applicant under subsection (a)(2) of this section has since admission maintained the status required of him at the time of his admission and such applicant desires to visit abroad and to return to the United States to resume the status existing at the time of his departure for such visit, (2) that the application is made in good faith, and (3) that the alien's proposed departure from the United States would not be contrary to the interests of the United States, the Attorney General may, in his discretion, issue the permit, which shall be valid for not more than one year from the date of issuance: *Provided,* That the Attorney General may in his discretion extend the validity of the permit for a period or periods not exceeding one year in the aggregate. The permit shall be in such form as shall be by regulations

prescribed for the complete identification of the alien.

Multiple reentries

(c) During the period of validity, such permit may be used by the alien in making one or more applications for reentry into the United States.

Presented and surrendered

(d) Upon the return of the alien to the United States the permit shall be presented to the immigration officer at the port of entry, and upon the expiration of its validity, the permit shall be surrendered to the Service.

Permit in lieu of visa

(e) A permit issued under this section in the possession of the person to whom issued, shall be accepted in lieu of any visa which otherwise would be required from such person under this chapter. Otherwise a permit issued under this section shall have no effect under the immigration laws except to show that the alien to whom it was issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning.

8 U.S.C. §1259 [Sec. 249]. Record of admission for permanent residence in the case of certain aliens who entered the United States prior to July 1, 1924

(a) A record of lawful admission for permanent residence may, in the discretion of the Attorney

General and under such regulations as he may prescribe, be made in the case of any alien, if no such record is otherwise available and such alien shall satisfy the Attorney General that he—

(1) entered the United States prior to July 1, 1924;

(2) has had his residence in the United States continuously since such entry;

(3) is a person of good moral character;

(4) is not subject to deportation; and

(5) is not ineligible to citizenship.

(b) An alien in respect of whom a record of admission has been made as authorized by subsection (a) of this section, shall be deemed to have been lawfully admitted to the United States for permanent residence as of the date of his entry prior to July 1, 1924.

8 U.S.C. §1329 [Sec. 279]. Jurisdiction of District Courts

The district courts of the United States shall have jurisdiction of all causes, civil and criminal, arising under any of the provisions of this title. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with

a violation under section 275 or 276 may be apprehended. No suit or proceeding for a violation of any of the provisions of this title shall be settled, compromised, or discontinued without the consent of the court in which it is pending and any such settlement, compromise, or discontinuances shall be entered of record with the reasons therefor.

APPENDIX B

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,976

TEXAS STATE AFL-CIO, *et al., Appellants,*

v.

ROBERT F. KENNEDY, Attorney General of the United States, and Raymond F. Farrell, Commissioner of the United States Immigration and Naturalization Service, *et al., Appellees.*

Appeal from the United States District Court for the District of Columbia

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Decided February 6, 1964

Mr. Charles J. Morris, of the bar of the Supreme Court of Texas, *pro hac vice,* by special leave of court, with whom *Messrs. J. Albert Woll* and *L. N. D. Wells, Jr.*, were on the brief, for appellants.

Mr. Robert C. Mayer also entered an appearance for appellants.

Mr. Gil Zimmerman, Assistant United States Attorney, with whom *Messrs. David C. Acheson,* United States Attorney, *Frank Q. Nebeker* and *David Epstein,* Assistant United States Attorneys, were on the brief, for appellees Kennedy and Farrell.

Mr. Michael J. Shea, with whom *Mr. Martin L. Friedman* was on the brief, for appellee Thomas Alvarado (Lugo), and certain other appellees.

Before WASHINGTON, DANAHER and MCGOWAN, Circuit Judges.

WASHINGTON, *Circuit Judge*: This litigation was brought in the District Court by a labor organization active in the Texas counties bordering on Mexico, and by individual workers employed in those counties, to obtain injunctive and declaratory relief against the United States immigration authorities, seeking to cause the expulsion or exclusion of a certain group of Mexican aliens permitted by those authorities to enter Texas, and to obtain and keep jobs there, in alleged violation of law. This relief would free the plaintiffs-appellants from the competition offered in the local labor market by these aliens. The Mexicans in question are individuals who have been given by the Federal authorities (defendants-appellees) the status of lawfully admitted "immigrants," entitled to permanent residence in this country. They have also been permitted by the

defendants-appellees to become so-called "alien commuters," i.e., persons who continue to maintain their homes in Mexico, but who are allowed to cross the border at frequent intervals to pursue their established employment in the United States. This permitted practice has prevailed for some decades, and many thousands of these aliens are said to be holding jobs in the United States, without either residing here or spending any major part of their earnings here.[1]

The plaintiff labor organization sued in a representative capacity on behalf of its members and its affiliated labor groups. In addition, some 188 individuals alleging economic detriment from the activities of the alien commuters sued as plaintiffs on their own behalf and as representatives of others similarly situated. The sole defendants named in the complaint were the two principal Government officials charged with the administration and enforcement of the immigration laws. Some 19 alien commuters intervened as defendants, individually and as representatives of a class. Motions for summary judgment were filed by all parties, and all the defendants moved to dismiss. The motions to dismiss were granted, and the plaintiffs' motion for summary judgment was denied. This appeal followed.

Much of the argument addressed to us relates to

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[1] The complaint also asked relief, though this was not as strongly urged, with respect to a similar group of Canadians allowed to enter the United States under like conditions to obtain work in American communities near the Canadian-American border.

the merits of the controversy, namely, whether "alien commuters" are entitled under the law to enjoy the privileges which have long been extended to them.[2] But we do not think it is either necessary or proper for us to express a view on this question.

Assuming the truth of the crucial allegations of the complaint brought by plaintiffs-appellants — namely, that expulsion or exclusion of the alien commuters would result in many jobs becoming available to the individual plaintiffs, or would at least reduce the competition faced by them in seeking employment, that the union is handicapped in its activities by the presence of the alien commuters, and that the latter are employed in this country only because the Government officials charged with the enforcement of the immigration laws have illegally permitted them to enter and to work here—this is not enough to give the plaintiffs-appellants standing to sue the defendant officials for declaratory and injunctive relief. Congress has not given them any such standing by express or implied provision of statute—either in the immigra-

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[2] Appellants' main contention on the merits is that the Immigration and Nationality Act of 1952, 8 U.S.C. §§1101 *et seq.*, "contains no provisions to grant permanent resident alien status to aliens who continue to reside in a foreign country, and who desire to enter the United States solely for daily employment as international commuters." Appellants argue that alien commuters cannot be regarded as "aliens lawfully admitted for permanent residence," as permanent residence here has not in fact been achieved, and hence they are not entitled to the privileges of aliens admitted for such residence.

The Government's argument on the merits is essentially based on long-standing administrative application of the immigration laws, before and after the passage of the 1952 Act, so as to permit the practices here attacked. The 1952 Act, says the Government, was drafted in full awareness of these practices by the Congress, and in effect continued them. The Government further argues that an alien who has "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant," see 8 U.S.C. §1101(a)(20), does not forfeit that status by becoming a commuter.

tion laws or in any other act. Absent such a congressional grant, mere economic competition made possible by governmental action (even if allegedly illegal) does not give standing to sue in the courts to restrain such action. *Tennessee Electric Power Co. v. Tennessee Valley Authority,* 306 U.S. 118 (1939); *Alabama Power Co. v. Ickles,* 302 U.S. 464 (1938); *Kansas City Power & Light Co. v. McKay,* 96 U.S. App. D.C. 273, 225 F.2d 924, cert. denied, 350 U.S. 884 (1955).[3] Even more emphatically must this be so where the competition complained of is sought to be eliminated by the wholesale expulsion or exclusion from this country of persons who have entered in reliance on our laws as interpreted and administered by the officials in charge.

It is quite true that an alien whose status here is threatened by action of our Government is generally granted standing to sue the responsible officials to vindicate his rights in our courts. See, for example, *Estrada v. Ahrens,* 296 F.2d 690 (5th Cir. 1961). But it does not follow that an alien's status may be judicially attacked by those with competitive interests adverse to his. The present case involves the rights of many thousands of human beings to continued employment in this country. Those persons are entitled to have their status and their rights adjudicated on the particular facts of their own cases, the circumstances of their entry, the representations made to them, the nature of their own conduct, and any other factors which

[3] Appellants rely on Amalgamated Meat Cutters v. Rogers, 186 F.Supp. 114 (D.D.C. 1960). That case, however, is not persuasive authority for the maintenance of suits of the present sort.

might reasonably be urged on their behalf. Normally any challenge to their status would be brought by the Government officials immediately concerned. It is doubtful indeed whether the legality of the presence in this country of a particular named alien can properly be attacked in a suit brought by a private individual who alleges that he was and is entitled to have the job now held by the alien, and that but for the latter's tenure of the job he would in fact be holding it and enjoying its rewards. Certainly it would be most unjust to allow a labor organization and its members to attack the status of many thousands of aliens—not even naming them as individual defendants—with the aim of dislodging them from their jobs, so that those jobs might then perhaps be obtained for union members. To deny standing to a union and its members to bring such a suit is entirely consistent with the rulings in the *Tennessee, Alabama Power,* and *Kansas City* cases, cited above, which denied standing in fairly comparable situations to corporations and their stockholders.

For these reasons, the order of the District Court, dismissing the complaint, will be

Affirmed.

APPENDIX C

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,976

TEXAS STATE AFL-CIO, *et al., Appellants,*

v.

ROBERT F. KENNEDY, Attorney General of the United States, and Raymond F. Farrell, Commissioner of the United States Immigration and Naturalization Service, *et al., Appellees.*

Before: Washington, Circuit Judge, in Chambers.

ORDER

It is ORDERED by the court, sua sponte, that the opinion in the above-entitled case is hereby amended as follows:

On line 28 of page 5 there shall be inserted after the word "members" Footnote 4 and at the conclusion of page 5 the following footnote shall appear:

> "Though the individual plaintiffs do not identify themselves as union members, but rather as immigrants who have taken up residence in the United States, their interests seem substantially those of the union and its members. They allege that they have been unemployed at various periods during the years 1960 and 1961, "at a time when commuting aliens with I-151 border crossing cards were working at jobs in the United States which plaintiffs were capable

of performing." They further say in the complaint:

> "Defendants have largely ignored the provisions of Title 8, U.S.C. §§1101(a)(15)(H) and 1184 as a source of alien labor which can be made available without displacing the employment of workers in the United States. Instead, defendants have knowingly permitted the use of permanent resident alien status by commuting aliens who are residents of contiguous foreign territory. By this 'amiable fiction,' I-151 border crossing cards, which are designed solely for issuance to bona fide residents of the United States with a current status of permanent resident alien, are used as a device to permit daily commutation entry of residents of a foreign country for the sole purpose of engaging in employment in the United States. Such use violates the Act, and is in derogation of the letter and intent of said Act regarding use of the express provisions referred to herein above, and also Title 8 U.S.C. §1182(a)(14), for entry of aliens to engage in employment under conditions which will safeguard domestic labor."

We have given full weight to these contentions in reaching our conclusion that the union and the individual plaintiffs have no standing to bring this suit.

Dated: March 18, 1964

APPENDIX D

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,976

TEXAS STATE AFL-CIO, *et al., Appellants,*

v.

ROBERT F. KENNEDY, Attorney General of the United States, and Raymond F. Farrell, Commissioner of the United States Immigration and Naturalization Service, *et al., Appellees.*

Before: Washington, Circuit Judge, in Chambers.

ORDER

It is ORDERED, sua sponte, that the order dated March 18, 1964, is hereby vacated, and it is

FURTHER ORDERED, sua sponte, that the opinion in the above-entitled case is hereby amended as follows:

On line 28 of page 5 there shall be inserted after the word "members" Footnote 4 and at the conclusion of page 5 the following footnote shall appear:

> "Though the individual plaintiffs do not identify themselves as union members, but rather as residents of the United States, their interests seem substantially those of the union and its members. They allege that they have been unemployed at various periods during the years 1960 and 1961, "at a time when commuting aliens with I-151

border crossing cards were working at jobs in the United States which plaintiffs were capable of performing." They further say in the compaint:

> "Defendants have largely ignored the provisions of Title 8, U.S.C. §§1101 (a) (15) (H) and 1184 as a source of alien labor which can be made available without displacing the employment of workers in the United States. Instead, defendants have knowingly permitted the use of permanent resident alien status by commuting aliens who are residents of contiguous foreign territory. By this 'amiable fiction,' I-151 border crossing identification cards, which are designed solely for issuance to bona fide residents of the United States with a current status of permanent resident alien, are used as a device to permit daily commutation entry of residents of a foreign country for the sole purpose of engaging in employment in the United States. Such use violates the Act, and is in derogation of the letter and intent of said Act regarding use of the express provisions referred to herein above, and also Title 8 U.S.C. §1182(a) (14), for entry of aliens to engage in employment under conditions which will safeguard domestic labor."

We have given full weight to these contentions in reaching our conclusion that the union and the individual plaintiffs have no standing to bring this suit.

Dated: March 23, 1964